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34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA92

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing programs administered under Title I, part A, of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These regulations implement recent changes to the standards and assessment requirements of Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act) and were drafted subject to a negotiated rulemaking process.

DATES: These regulations are effective August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

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SUPPLEMENTARY INFORMATION: These regulations implement changes to Title I, part A, of the Elementary and Secondary Education Act, as amended by the NCLB Act (Public Law 107–110), enacted January 8, 2002.

On May 6, 2002, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 30452). The proposed regulations were developed through a negotiated rulemaking process on the issues of standards and assessments in accordance with section 1901(b)(3) of Title I.

In the preamble to the NPRM, the Secretary discussed on pages 30453 through 30456 the major changes proposed in that document to implement changes in the standards and assessment provisions of Title I, part A, made by the NCLB Act. These included the following:

- Clarifying in § 200.1(b)(2) that States have the flexibility to develop academic content standards in reading/language arts and mathematics that cover either each grade specifically or more than one grade. If a State develops academic content standards that cover more than one grade, the State must have content expectations that indicate to teachers and others the portion of the standards to be taught at each grade level.
- Specifying in § 200.1(c)(2) that, although academic content standards may cover more than one grade, States must have academic achievement standards for each grade and subject assessed.
- Clarifying in § 200.1(c)(3) that, with regard to student achievement standards in science, States must have achievement levels and descriptions of those levels in place by the 2005–2006 school year. The actual assessment scores (called ''cut scores'' by the assessment community) for those achievement levels, however, would not have to be set until the assessments are due in the 2007–2008 school year.
- Incorporating in § 200.2 the statutory requirements for a State to implement a system of high-quality, yearly student academic assessments.
- Requiring in § 200.2(b)(2) that a State's assessment system be designed to be valid and accessible for use with the widest possible range of students, including students with disabilities and students with limited English proficiency.
- Clarifying in § 200.3 that a State may use different types of assessments as long as those assessments (for each grade and subject) address the depth and breadth of the State's academic content standards; are valid, reliable, and of high technical quality; and express results in terms of the State's academic achievement standards.
- Clarifying in § 200.4(a) that, if a State is prohibited by State law from establishing standards and assessments applicable to all public school students, the State may adopt standards and assessments applicable to students participating under subpart A of this part or permit each LEA to adopt its own standards and assessments subject to criteria developed by the State.
- Clarifying in § 200.5(a) that, beginning no later than the 2005–2006 school year, States must administer yearly assessments in both reading/language arts and in mathematics in each of grades 3 through 8 and at least once in grades 10 through 12.
- Including in § 200.5(c) the statutory requirement that a State provide assessment results to school districts, schools, and teachers no later than the beginning of the next school year. This requirement starts with the 2002–2003 school year.
- Clarifying in § 200.6 the requirement that State assessment systems include all students and provide appropriate accommodations for students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973.
- Requiring in § 200.6(a)(2) that a State's academic assessment system must provide one or more alternate assessments for those students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), who, in the determination of the student's IEP team, cannot participate in all or part of the State assessments, even with appropriate accommodations.
- Requiring in § 200.6(b)(2) that a State assess, in English, limited English proficient students' achievement in reading/language arts if those students have been in schools in the United States (except Puerto Rico) for three or more consecutive years and clarifying that this requirement does not exempt a State from assessing LEP students for three years.
- Clarifying in § 200.7(a)(2) that, in disaggregating data, a State is responsible for determining how many students constitute a sufficient number to make the results reliable for accountability and reporting purposes.
- Clarifying in § 200.7(b)(2) that a State must apply section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act) in determining whether disaggregated data would reveal personally identifiable information.
- Requiring in § 200.8(a) that individual student reports must describe achievement measured against the State's academic achievement standards.
- Requiring in § 200.9(b) that a State must continue to develop assessments if amounts appropriated at the Federal level for assessments are below a certain minimum.
- Clarifying in § 200.10 that nothing in § 200.2 would require a private school to participate in a State's assessment system. However, through timely consultation with private school officials, an LEA must determine how it will assess academic services to participating private school students and how it will use the assessment results to improve services to these students.

The final regulations reflect these provisions, modified as noted in the analysis of comments and changes in the appendix.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 140 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We discuss substantive issues under the sections of these regulations to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize the Secretary to make. We also do not address suggested changes to other parts of Title I that are not covered in these regulations. Those comments will be considered as we develop future proposed regulations, as appropriate.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the following topic:

Executive Order 12866

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians-education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: June 28, 2002.

Rod Paige,

Secretary of Education.

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. The heading for part 200 is revised to read as set forth above.

3. Revise the first undesignated center heading in subpart A of this part to read as follows:

Standards and Assessments

4. Revise §§ 200.1 through 200.6 to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part;

(2) Include the same knowledge, skills, and levels of achievement expected of all students; and

(3) Include at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science, and may include other subjects determined by the State.

(b) *Academic content standards.* (1) The challenging academic content standards required under paragraph (a) of this section must—

(i) Specify what all students are expected to know and be able to do;

(ii) Contain coherent and rigorous content; and

(iii) Encourage the teaching of advanced skills.

(2) A State's academic content standards may—

(i) Be grade specific; or,

(ii) Cover more than one grade if grade-level content expectations are provided for each of grades 3 through 8.

(3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and, beginning in the 2005–06 school year, science, irrespective of course titles or years completed.

(c) *Academic achievement standards.* (1) The challenging student academic achievement standards required under paragraph (a) of this section must—

(i) Be aligned with the State's academic content standards; and

(ii) Include the following components for each content area:

(A) Achievement levels that describe at least—

(*1*) Two levels of high achievement—proficient and advanced—that determine how well students are mastering the material in the State's academic content standards; and

(*2*) A third level of achievement—basic—to provide complete information about the progress of lower-achieving students toward mastering the proficient and advanced levels of achievement.

(B) Descriptions of the competencies associated with each achievement level.

(C) Assessment scores (''cut scores'') that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.

(2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.

(3) With respect to academic achievement standards in science, a State must develop—

(i) Achievement levels and descriptions no later than the 2005–06 school year; and

(ii) Assessment scores (''cut scores'') after the State has developed its science assessments but no later than the 2007–08 school year.

(d) *Subjects without standards.* If an LEA serves students under subpart A of this part in subjects for which a State has not developed academic standards, the State must describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all other students.

(e) *Other subjects with standards.* If a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

(**Authority** 20 U.S.C. 6311(b)(1))

(Approved by the Office of Management and Budget under control number 1810–0576)

§ 200.2 State responsibilities for assessment.

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007–08 school year, science.

(2)(i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

(b) The assessment system required under this section must meet the following requirements:

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(4)(i) Be valid and reliable for the purposes for which the assessment system is used; and

(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(5) Be supported by evidence (which the Secretary will provide, upon request, consistent with applicable federal laws governing the disclosure of information) from test publishers or other relevant sources that the assessment system is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in § 200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content.

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of items—

(i) Such as constructed-response, short answer, or essay questions; or

(ii) That require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment system of all students in the grades being assessed consistent with § 200.6.

(10) Except as provided in § 200.7, enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status as defined in Title I, part C of the Elementary and Secondary Education Act (hereinafter ''the Act'');

(v) Students with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State assessment system may include academic assessments that do not meet the requirements in paragraph (b) of this section as additional measures. Those additional assessments—

(1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of Title I of the Act, if those assessments were not used; but

(2) May identify additional schools for school improvement, corrective action, or restructuring.

(**Authority:** 20 U.S.C. 6311(b)(3))

§ 200.3 Designing State Academic Assessment Systems.

(a)(1) For each grade and subject assessed, a State's academic assessment system must—

(i) Address the depth and breadth of the State's academic content standards under § 200.1(b);

(ii) Be valid, reliable, and of high technical quality;

(iii) Express student results in terms of the State's student academic achievement standards; and

(iv) Be designed to provide a coherent system across grades and subjects.

(2) A State may include in its academic assessment system under § 200.2 either or both—

(i) Criterion-referenced assessments; and

(ii) Assessments that yield national norms, provided that, if the State uses only assessments referenced against national norms at a particular grade, those assessments—

(A) Are augmented with additional items as necessary to measure accurately the depth and breadth of the State's academic content standards; and

(B) Express student results in terms of the State's student academic achievement standards.

(b) A State that includes a combination of assessments as described in paragraph (a)(2) of this section, or a combination of State and local assessments, in its State assessment system must demonstrate in its State plan that the system has a rational and coherent design that—

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards—

(i) Ensuring alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Provides information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(c) A State that includes local assessments in the system described in § 200.2(b) must—

(1) Establish technical criteria to ensure that each local assessment meets the requirements of paragraphs (a)(1) and (c)(2) of this section;

(2) Demonstrate in its State plan that all local assessments used for this purpose—

(i) Are equivalent to one another and to State assessments, where they exist, in their content coverage, difficulty, and quality;

(ii) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(iii) Provide unbiased, rational, and consistent determinations of the annual progress of schools and LEAs within the State;

(3) Review and approve each local assessment to ensure that it meets or exceeds the State's technical criteria in paragraph (c)(1) of this section and the requirements in paragraph (c)(2) of this section; and

(4) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(d) A State's academic assessment system may rely exclusively on local assessments only if it meets the requirements of § 200.4.

(**Authority:** 20 U.S.C. 6311(b)(3))

§ 200.4 State law exception.

(a) If a State provides satisfactory evidence to the Secretary that neither the State educational agency (SEA) nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§ 200.1 and 200.2 by—

(1) Adopting academic standards and academic assessments that meet the requirements of §§ 200.1 and 200.2 on a Statewide basis and limiting their applicability to students served under subpart A of this part; or

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that—

(i) Meet the requirements in §§ 200.1 and 200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section must—

(1) Establish technical criteria for evaluating whether each LEA's—

(i) Academic content and student academic achievement standards meet the requirements in § 200.1; and

(ii) Academic assessments meet the requirements in § 200.2, particularly regarding validity and reliability, technical quality, alignment with the LEA's academic standards, and inclusion of all students in the grades assessed;

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they—

(i) Meet or exceed the State's technical criteria; and

(ii) For purposes of this section—

(A) Are equivalent to one another in their content coverage, difficulty, and quality;

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(C) Provide unbiased, rational, and consistent determinations of the annual progress of LEAs and schools within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(**Authority:** 20 U.S.C. 6311(b)(5))

§ 200.5 Timeline for assessments.

(a) *Reading/language arts and mathematics.* (1) Through the 2004–2005 school year, a State must administer the assessments required under § 200.2 at least once during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005–2006 school year, a State must administer both the reading/language arts and mathematics assessments required under § 200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the science assessments required under § 200.2 must be administered at least once during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(**Authority:** 20 U.S.C. 6311(b)(3))

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed.

(a) *Students eligible under IDEA and Section 504.* (1) *Appropriate accommodations.* A State's academic assessment system must provide—

(i) For each student with disabilities, as defined under section 602(3) of the IDEA, appropriate accommodations that each student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(ii) For each student covered under section 504 of the Rehabilitation Act of 1973 (Section 504), appropriate accommodations that each student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grades in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(2) *Alternate assessment.* (i) The State's academic assessment system must provide for one or more alternate assessments for a student with disabilities as defined under section 602(3) of the IDEA who the student's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section, the State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(*1*) A natural disaster; or

(*2*) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) *Migratory and other mobile students.* A State must include migratory students, as defined in Title I, part C, of the Act, and other mobile students in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Students experiencing homelessness.*

(1) A State must include homeless students, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment, reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to disaggregate, as a separate category under § 200.2(b)(10), the assessment results of the students referred to in paragraph (d)(1) of this section.

(Approved by the Office of Management and Budget under control number 1810–0576)

(**Authority:** 20 U.S.C. 6311(b)(3))

5. Add § 200.7 to read as follows:

§ 200.7 Disaggregation of data.

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement results under section 1111(h) of the Act and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated subgroups.

(Approved by the Office of Management and Budget under control number 1810–0576)

(**Authority:** 20 U.S.C. 6311(b)(3); 1232g)

6. Transfer the undesignated center heading ''Schoolwide Programs'' from its location after § 200.7 and place it after § 200.17 in subpart A of part 200.

7. Redesignate § 200.8 as § 200.18 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200.

8. Add a new § 200.8 and place it under the undesignated center heading ''Standards and Assessments'' to read as follows:

§ 200.8 Assessment reports.

(a) *Student reports.* A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

(1)(i) Include information regarding achievement on the academic assessments under § 200.2 measured against the State's student academic achievement standards; and

(ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and

(2) Are provided to parents, teachers, and principals—

(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format, including an alternative format (e.g., Braille or large print) upon request; and

(iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.* (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with § 200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The requirement to report itemized score analyses in paragraph (b)(1) of this section does not require the release of test items.

(**Authority:** 20 U.S.C. 6311(b)(3))

9. Add § 200.9 under the undesignated center heading ''Standards and Assessments'' to read as follows:

§ 200.9 Deferral of assessments.

(a) A State may defer the start or suspend the administration of the assessments required under § 200.2 that were not required prior to January 8, 2002 for one year for each year for which the amount appropriated for State assessment grants under section 6113(a)(2) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act.

(b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6113(a)(2) of the Act.

(**Authority:** 20 U.S.C. 6311(b)(3); 7301b(a)(2))

§ 200.10 [Redesignated as § 200.14]

10. Redesignate § 200.10 as § 200.14.

11. Add a new § 200.10 and place it under the undesignated center heading ''Standards and Assessments'' to read as follows:

§ 200.10 Applicability of a State's academic assessments to private schools and private school students.

(a) Nothing in § 200.1 or § 200.2 requires a private school, including a private school whose students receive services under subpart A of this part, to participate in a State's academic assessment system.

(b)(1) If an LEA provides services to eligible private school students under subpart A of this part, the LEA must, through timely consultation with appropriate private school officials, determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

(2) The assessments referred to in paragraph (b)(1) of this section may be the State's academic assessments under § 200.2 or other appropriate academic assessments.

(**Authority:** 20 U.S.C. 6320, 7886(a))

Appendix—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Comment: One commenter recommended amending the regulations to make clear that, if a State has adopted academic content standards in subjects other than reading/language arts, mathematics and science for all students, those standards must be the basis of instruction for Title I students in those other subjects.

Discussion: The statute explicitly requires that a Title I student be taught the same knowledge and skills and be held to the same expectations as all students in subjects a student is taught, but for which a State is not required to develop academic standards. The Secretary agrees that a clarification is needed to ensure that Title I students are also held to the same expectations as all students when a State has academic content standards for all students in subjects other than reading/language arts, mathematics and science. However, ensuring that such standards apply to Title I students does not change the statutory requirements for calculating adequate yearly progress.

Changes: Section 200.1(e) has been added to clarify that, if a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

Comment: One commenter recommended amending the regulations to require States to develop standards in computer science.

Discussion: The NLCB Act identifies reading/language arts, mathematics, and science as the three subjects for which States must develop academic contents standards. States are free to develop standards in other subject areas and, in fact, many have done so.

Changes: None.

Comment: Several commenters raised issues related to student academic achievement standards. One commenter sought clarification as to whether States may have more than three levels of student achievement standards. Several other commenters indicated a need for States to have grade-specific examples of student work to help ensure that the public has a clear understanding of what the ''proficient'' level of achievement entails.

Discussion: States have the flexibility to develop more than three levels of student achievement standards. However, States choosing to do so must ensure that their student achievement standards include at least the three levels required by the statute. With regard to increasing public understanding of what constitutes the ''proficient'' level of achievement, the regulations already specify that student achievement standards must include descriptions of the competencies associated with each achievement level. As a result, States will need to have grade-specific information for each subject assessed.

Changes: None.

Comment: One commenter suggested that greater clarity was needed as to when ''assessment scores'' or ''cut scores'' defining the boundaries between achievement levels on science assessments must be provided.

Discussion: The regulations state that ''assessment scores'' or ''cut scores'' for achievement levels on science assessments do not have to be set until the assessment are due in 2007–2008. For tests administered in the 2007–2008 school year, completion of science assessment scores for each achievement level is expected by December 2008.

Changes: None.

Comment: One commenter expressed concern that the regulations requiring that high school content standards define the knowledge and skills that all students are expected to know and be able to do will result in standards based on minimum competencies.

Discussion: High school standards must reflect what a State expects all students to know by the time they graduate in the broad academic content areas of reading/language arts, mathematics and science, as opposed to the content covered in a specific course that not all students take. Academic content standards address both skills and subject content. While a student may be able to demonstrate process skills through different content, the intent of content standards is that there is a body of challenging knowledge in an academic content area that all students, not just those in a particular class, are expected to know. All students must have access to the same challenging content if no child is to be left behind.

Changes: None.

Comment: One commenter suggested that the Secretary provide a deadline for the development of grade-level content standards or expectations as well as the descriptions of competencies associated with each achievement level in mathematics and reading/language arts.

Discussion: The 2002 Consolidated State Application requires that States provide a timeline of major milestones for either adopting challenging content standards in, or disseminating grade-level expectations for, reading/language arts and mathematics at each grade level for grades 3 through 8. States must provide evidence of content standards or grade-level expectations in reading/language arts and mathematics for grades 3 through 8 by May 2003.

Changes: None.

Section 200.2 State Responsibilities for Assessment

Comment: A number of commenters commented generally on the NCLB Act's assessment requirements. One commenter, for example, applauded the NCLB Act's

efforts to move districts to annual assessments in grades 3 through 8. Another commenter supported a national test to obtain more standardization among States. Another commenter, however, expressed concern that the NCLB Act places a disproportionate emphasis on nationwide testing and insufficient emphasis on basic learning and curriculum deficits. The commenter noted that, without the necessary curriculum frameworks in place, students would not be able to successfully pass the required tests. Other commenters, particularly teachers, criticized reliance on one assessment to judge performance and emphasized the need for multiple assessments throughout the year to truly know that students are learning.

Discussion: The assessment requirements are one cornerstone of the NCLB Act. They implement President George W. Bush's plan to assess students in grades 3 through 8 and at least once during high school to help teachers and parents know how their students are achieving. These assessments also are the primary vehicle for holding schools and school districts accountable for student achievement. The NCLB Act assessment requirements do not require, or even envision, a national test. Rather, they rely on each State to develop or adopt an assessment system that is aligned with the State's own academic content and achievement standards. Moreover, the NCLB Act assessment requirements do not purport to be the sole assessments that schools will use to measure the achievement of their students. Teachers regularly assess the progress of their students through formal and informal measures and modify their instruction accordingly.

Changes: None.

Comment: Several commenters questioned whether § 200.2 permits a State assessment system to include approaches such as matrix sampling or parallel forms that administer different questions to different students. The commenters expressed support for flexibility in this regard.

Discussion: The statute does not preclude the use of parallel test forms or assessments that employ a matrix design as long as the assessments yield individual student results expressed in terms of the State academic content and achievement standards. The statute does require that all students be held to the same achievement standards. This means that assessments for a particular grade and subject must elicit comparable content knowledge and understanding, within the framework of the standards, for all students tested. If parallel forms or a matrix design are used, the State must provide evidence that all students are being held to the same academic achievement standards for the grade tested.

Changes: None.

Comment: One commenter recommended that a State's assessment system under § 200.2 require ''individual level assessments.'' According to the commenter, those assessments are a valuable tool in learning and teaching because they assess where a child is and how much growth the child has made in a nine-month period.

Discussion: The focus of the NCLB standards and assessment regulations is promoting achievement to high standards by schools and students using standards-based assessments aligned with a State's academic content and achievement standards. Individual level assessments (or levels assessments or adaptive assessments) would measure the performance of some students at a particular grade level against lower standards. This would result in some schools being held to lower standards than other schools in the same school district. Use of levels assessments would not allow all schools and students to be held to the same high standards required by the NCLB Act.

Changes: None.

Comment: One commenter suggested that the final regulations clarify that charter schools must comply with all the assessment and reporting requirements that apply to traditional public schools. The commenter also suggested that chartering agencies be required to submit all data to the SEA in order to provide parents and the public comprehensive and accurate information on all public schools in the State.

Discussion: Under section 1111(b)(3)(A) of the Act, each State must implement a set of high-quality, yearly student assessments that will be used as the primary means of determining the yearly performance of the State and of each LEA and school in the State. Thus, the assessment requirements in §§ 200.2 through 200.9 apply, as appropriate, to all public elementary and secondary schools in a State. As such, they also apply to public charter schools.

Changes: None.

Comment: A number of commenters commented on the fact that the regulations require a State's assessment system to meet certain requirements. Two commenters supported the emphasis on an assessment system, noting that it recognizes a coherent program of standards and assessments that provides flexibility to States. Other commenters, however, disagreed and suggested changing the phrases ''assessment system'' and ''system of assessments'' throughout the regulations to ''assessments'' to be consistent with the statute. The commenters expressed concern that, under an assessment system, a State could depart from using the same assessments for all students.

Discussion: Section 1111(b)(3) of the Act requires a State to develop and implement a ''set of high-quality, yearly student academic assessments.'' The final regulations intentionally use the phrases ''assessment system'' and ''system of assessments'' to emphasize that this set of assessments must produce a coherent and rational system for measuring the depth and breadth of the State's content standards and for holding schools and LEAs accountable. It also permits flexibility in how that system is structured. Using the word ''system'' in no way negates the fact that the assessments required under § 200.2 must be the same assessments used to measure the achievement of all students.

Changes: None.

Comment: One commenter noted regarding § 200.2(a)(2) that, if a State develops assessments in subjects other than reading/language arts, mathematics, and science, the State must administer those assessments to Title I students.

Discussion: Section 1111(b)(1) of the Act concerning academic standards makes clear that a State must have such standards for all public elementary and secondary school students, including students served under this part, in subjects determined by the State. Those subjects must include reading/language arts, mathematics, and science, but may certainly include other subjects as well. Section 1111(b)(3) of the Act also requires a State to have assessments that are aligned with its academic standards, and those assessments must be the same academic assessments used to measure the achievement of all students. As a result, if a State adopts standards and aligned assessments in subjects not required under section 1111, the State must also use those standards and assessments to measure the achievement of students participating under subpart A of this part. However, assuring that such assessments apply to Title I schools does not change the statutory requirements for calculating adequate yearly progress.

Changes: Section 200.2(a)(2)(ii) has been added to make clear that, if a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

Comment: A number of commenters noted that the provision in § 200.2(b)(1) requires the assessment system to measure the achievement of all students. The commenters expressed concern that, because students do not all achieve at the same level, the assessment system must be allowed to assess a student's actual level of achievement, not just the desired level of achievement. Teachers, in particular, emphasized that all students do not achieve at the same level and that tests, to be helpful for planning instruction, must focus on student performance, not a student's grade level. Other commenters specifically supported ''out-of-level'' tests for students who are studying at a lower academic level than their grade level, suggesting that grade-level assessments would not be valid because they would not focus on what a student was actually learning nor would they provide meaningful information to parents.

Discussion: One of the bedrock principles of the NCLB Act is that all students can learn to high standards. As a result, section 1111(b)(1) requires challenging academic content and student achievement standards that a State applies to all schools and students in the State. Similarly, section 1111(b)(3) requires a State to develop aligned assessments that the State uses to measure the achievement of all students. These requirements are accurately implemented in §§ 200.2(b)(1) and 200.6(a) of the final regulations. Specifically, as § 200.6(a)(1) indicates, a State's assessment system must provide accommodations so that a student with disabilities or a student covered under Section 504 of the Rehabilitation Act of 1973 can be held to the content and achievement standards for the grade in which the student is enrolled. Although ''out-of-level'' tests, for example, may provide instructional information about a student's progress, they

are not an acceptable means to meet the State's assessment requirements under §§ 200.2 and 200.6 or the accountability requirements of the NCLB Act.

Changes: None.

Comment: Several commenters commented on § 200.2(b)(5), which requires a State assessment system be supported by evidence from test publishers or other relevant sources that the system is of adequate technical quality for each purpose required under the Act. One commenter requested that this requirement be phased in to apply to new assessments entered into by States after the effective date of the final regulations. The commenter expressed concern that evidence of technical quality may not be covered under existing contracts. Other commenters suggested adding disclosure protections provided for under State law and contractual agreements.

Discussion: Section 200.2(b)(5) implements a new requirement in section 1111(b)(3)(C)(iv) that a State must provide the Secretary evidence from the test publisher or other relevant sources that the State's assessments are of adequate technical quality. Although this is a new statutory requirement, the Secretary has requested evidence of technical quality in its review of State assessment systems under the Improving America's Schools Act, predecessor to the NCLB Act. As a result, the Secretary does not anticipate that this requirement will pose a problem for States. Moreover, this requirement applies to assessments developed to meet the new NCLB Act requirements and should thus afford States sufficient time to modify test contracts, if necessary. With respect to the comment to protect disclosure of information based on State law or contractual provisions, we would expect the State and its test publishers to work out any issues in a manner that permits submission of adequate evidence of technical quality. Once submitted to the Department, the technical information is a public record, subject only to Federal disclosure rules and protections.

Changes: None.

Comment: One commenter requested that the Secretary clarify the requirement in § 200.2(b)(7) that a State's assessment system must include multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content. According to the commenter, multiple measures means multiple ways of measuring the same proficiencies to increase the validity of determinations based on the assessment results.

Discussion: The term ''multiple measures'' has several meanings. On occasion, it means assessments using different formats (selected response, constructed response, etc.). It also refers to assessments that measure objectives within a particular content domain and assessments with items that measure both higher-order thinking skills (reasoning, synthesis, analysis, etc.) as well as knowledge and recall items to assess the depth and breadth of mastery of the particular content domain. The final regulations, therefore, do not limit the meaning.

Changes: None.

Section 200.3 Designing State Academic Assessment Systems

Comment: A number of commenters generally supported the flexibility afforded in § 200.3.

Discussion: The Secretary appreciates the commenters' support. In developing this provision, the Secretary intends to afford significant flexibility to States, consistent with section 1111(b)(3) of the Act, to enable States to design assessment systems that best meet their needs. At the same time, the Secretary has included safeguards to ensure that those systems adequately measure a State's standards, hold schools and students to high academic achievement standards, are valid, reliable, and of high technical quality, express student results in terms of the State's standards, and are designed to provide a coherent system across grades and subjects.

Changes: None.

Comment: Several commenters commented on § 200.3(a)(1)(i), which requires a State's assessment system to address the depth and breadth of the State's academic content standards. Some commenters endorsed the regulatory language as written, noting that the system as a whole must address the depth and breadth of the State's standards but not necessarily each assessment component. One commenter, in particular, argued persuasively that it would be literally impossible, as well as unnecessary, for a State to measure students' attainment of every single content standard. This commenter suggested that States need to be able to identify their highest-priority content standards and then ensure that students' mastery of those standards is appropriately measured to inform instruction. Other commenters, however, strongly supported requiring an assessment system to address fully the depth and breadth of the State's standards. These commenters believed that, without the word ''fully,'' any assessment system could meet the requirement that it address the depth and breadth of a State's content standards.

Discussion: Section 1111(b)(3)(C)(ii) of the Act requires a State's assessment system to be aligned with its academic content and student achievement standards and provide coherent information about student attainment of those standards. The purpose of § 200.3(a)(1)(i) is to ensure that a State's assessment system measures both the depth and breadth of the State's standards. As the comments suggest, the system as a whole must meet this requirement. The Secretary does not believe that adding the word ''fully' would significantly strengthen this requirement.

Changes: None.

Comment: One commenter questioned whether § 200.3(a)(1)(i) in effect requires a graduation test. The commenter expressed concern that, read in conjunction with § 200.1(b)(3), which requires high-school content standards ''irrespective of course titles or years completed,'' the requirement in § 200.3(a)(1)(i) that high-school assessments address the depth and breadth of the State's content standards would result in a de facto graduation test.

Discussion: Section 200.1(b)(3) is intended to make clear that a State must define the academic content standards it expects high-school students to know and be able to do. These standards may well include content that is covered in several courses. For example, a State's mathematics standards may include content in algebra, geometry, and probability. Under § 200.3(a)(1)(i), a State's high-school assessments must address the depth and breadth of the State's content standards. As a result, an end-of-course Algebra I test may not measure the depth and breadth of this State's mathematics standards unless that test also measures geometry and probability. The provision in § 200.3(a)(1)(i), however, is not intended to require a de facto graduation test.

Changes: None.

Comment: A number of commenters addressed § 200.3(a)(2), which permits a State to include in its assessment system either or both criterion-referenced assessments or nationally normed assessments that are augmented with additional items. Some commenters supported this flexibility. One commenter supported the use of nationally normed assessments only if those assessments are augmented with additional items as necessary to measure a State's content standards. Other commenters, however, strongly criticized the use of nationally normed assessments at all, arguing they are contrary to the intent of the NCLB Act and would damage effective implementation. These commenters noted that norm-referenced assessments measure performance relative to other students rather than to standards and thus are antithetical to the notion that all students can learn at high levels. Another commenter noted that norm-referenced assessments are not aligned with State standards.

Discussion: The Secretary has carefully considered these comments and believes the final regulations contain the proper amount of flexibility for States while requiring any State that uses only a nationally normed assessment at a particular grade to augment that assessment with additional items as necessary to measure the depth and breadth of the State's standards. Moreover, student results from an augmented nationally normed assessment must be expressed in terms of the State's achievement standards, not relative to other students in the nation. The Secretary believes these provisions address the commenters' concerns and will ensure that, before a State includes a nationally normed assessment in its assessment system, the State carefully examines the alignment of the assessment with the State's standards and the extent to which the State must add items to fully address its standards. Moreover, if a State combines criterion-referenced and nationally normed assessments, the State must demonstrate that its system has a rational and coherent design.

Changes: None.

Comment: A number of commenters commented on § 200.3(b), which permits a State assessment system to include a combination of State and local assessments, provided the system has a rational and coherent design and meets a number of

rigorous requirements. Some commenters strongly supported the flexibility this provision affords States. Several commenters, however, criticized this provision. The commenters argued that this provision conflicts with section 1111(b)(3)(C) of the Act, which requires a State's assessments to ''be the same academic assessments used to measure the achievement of all children'' in the State. Moreover, the commenters believed that LEAs, which are subject under the NCLB Act to much stricter accountability requirements than under the prior law, would have an incentive to adopt easier local assessment measures in order to ensure that their students make adequate yearly progress. The commenters also questioned whether LEAs have sufficient resources and expertise needed to develop local assessments that truly meet the rigorous standards for alignment, multiple measures, and inclusion that the Act requires. In addition, the commenters noted that using local assessments would preclude like comparisons of all students.

Discussion: The Secretary appreciates the commenters' concerns and believes that local assessments must be held to a high standard before they may be included in a State's assessment system. A State must demonstrate, for example, that its local assessments meet requirements such as validity, reliability, technical quality, alignment, and inclusion of all students. Furthermore, the State must demonstrate that the assessments are equivalent to one another in their content coverage, difficulty, and quality; have comparable validity and reliability; and provide unbiased, rational, and consistent determinations of the adequate yearly progress of schools and LEAs within the State. If local assessments can meet these requirements, the Secretary believes a State may include them in its State assessment system.

Changes: None.

Comment: One commenter questioned the reference in § 200.3(c)(1), which deals with local assessments in a State's assessment system, to § 200.3(a)(2), which permits either or both criterion-referenced or augmented nationally normed assessments. The commenter believed that the cross-reference assumed that any local assessment would be nationally normed.

Discussion: The purpose of the requirements in § 200.3(c)(1) is to ensure that a State whose assessment system includes local assessments establish technical criteria to ensure that each local assessment meets statutory requirements applicable to statewide assessments. Its purpose is not to require that local assessments be nationally normed assessments.

Changes: The cross-reference in § 200.3(c)(1) has been changed to refer to § 200.3(a)(1) and (c)(2), which establish requirements for local assessments that comprise a State's system.

Section 200.4 State Law Exception

Comment: One commenter objected to the regulation specifying that local assessments be equivalent to one another in content coverage, difficulty, and quality across a State. Instead, the commenter suggested that voluntary consortia of LEAs using common sets of standards, benchmarks, and assessments be permitted.

Discussion: The NCLB Act requires a State to use its State assessment system to measure the adequate yearly progress (AYP) of each public school and LEA in the State and to hold schools and LEAs accountable for failing to make AYP. To ensure that LEAs are evaluated fairly and consistently across a State that is using only local assessments, it is thus critical that the State establish criteria to ensure equivalence in content coverage, difficulty, and quality of LEA's local assessments. In addition, the statute requires that AYP be calculated for a State based on the State's aligned assessment system. In a State relying solely on local assessments, the results of AYP calculations could not provide statistically valid and reliable results without equivalency among assessments.

Changes: None.

Section 200.6 Inclusion of All Students

Comment: One commenter indicated that clarification was needed regarding the inclusion of students with limited English proficiency (LEP) in State assessments. The commenter suggested that the Secretary require States to establish criteria and procedures for including LEP students in the mathematics and science tests prior to the three-year schooling requirement for including them in reading/language arts assessments. This commenter felt that the inclusion of LEP students in the assessments from the beginning of the school year is neither practical nor conducive to the attainment of valid and reasonable assessment results.

Discussion: The statute requires that LEP students be included in State assessment systems. For their first three years in U.S. schools, such students must be tested in reading/language arts and mathematics content (and science by 2007–2008) in a valid and reliable manner, including, to the extent practicable, native language assessments if a native language assessment would yield better information on what a student knows and can do. Students with limited-English proficiency who have been in U.S. schools (except Puerto Rico) for three or more years are to be tested in English on the reading/language arts assessment.

Changes: None.

Comment: One commenter recommended that SEAs and LEAs be required to report on the progress of students who are homeless and who attend school in more than one school district in a school year. That commenter also recommended amending the regulations to require that the performance of homeless children who attend more than one school in an LEA be used in determining the progress of the SEA in meeting adequate yearly progress.

Discussion: The goal of the NCLB Act is to ensure that all students benefit from school reforms designed to increase achievement, including students who are experiencing homelessness. As additional guidance documents are developed, the Secretary will work to identify ways to assist States and LEAs accomplish this goal.

On the issue of calculating AYP for States, the statute already requires that students who have attended several schools in an LEA for a full academic year but have not attended the same school for a full academic year must be included in assessments and their performance be used in determining whether LEAs make AYP. As a result, data for these students will influence whether SEAs make AYP also. Moreover, even if homeless children attend schools in several LEAs, they must be assessed and their performance would be included in determining State AYP.

Changes: None.

Section 200.7 Disaggregation of Data

Comment: A number of commenters expressed concern regarding the requirement that States set their own group sizes and minimum thresholds. One commenter suggested that the regulations specify what a reliable group size is. Many commenters recommended that the Secretary set a uniform minimum student threshold for reporting accountability to ensure statistical reliability and validity. On the other hand, one commenter supported the State's ability to set its own minimum thresholds. This commenter commended the Department's acknowledgement of the flexibility in the threshold necessary to accommodate the variability in circumstances.

Discussion: The statute states that subgroup disaggregation is not required for accountability or reporting purposes if the number is too small to yield reliable information or if the results would reveal personally identifiable information. This issue was subject to a great deal of discussion during negotiated rulemaking. Ultimately, it was decided that each State is in the best position to make this determination due to the wide variety in school size across the nation, differences in test psychometric properties, and the fact that different numbers may be reliable for reporting than for accountability.

Changes: None.

Section 200.8 Assessment Reports

Comment: One commenter recommended amending the regulations to require that score analyses indicate the number of items and assessment instruments that support a determination that a student is less than proficient in meeting a particular State standard.

Discussion: The regulations do not specify what a score analyses must include so that States may have maximum flexibility in tailoring their score analyses to the type of assessment system they have developed. The Secretary agrees that there may be circumstances where such information is helpful. A State may certainly include the commenter's suggested items in its score analyses.

Change: None.

Section 200.9 Deferral of Assessments

Comment: One commenter indicated that requiring continued work on assessment development when the appropriation falls below the trigger amount would be difficult if Federal funds are being used for assessment development.

Discussion: The regulations restate the statutory requirements. The Secretary believes that Congress did not want

assessment development to cease once it begins, even if sufficient Federal funds are not available.

Changes: None.

Section 200.10 Applicability of a State's Academic Assessments to Private Schools and Private School Students

Comment: Several commenters commented generally on the applicability of a State's academic assessments to private schools and private school students. Additionally, one commenter suggested that the regulation should be revised to make it clearer that the LEA has the sole authority for determining which assessment to use when assessing services to eligible students attending private schools.

Discussion: These regulations do, in fact, indicate that the decision rests with the LEA. However, the LEA must consult with private school officials in making the determination.

Changes: None.

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